

Last Updated: October 2, 2018

## INNOVATUS IMAGING DEPOT REPAIR TERMS AND CONDITIONS

### 1. Definitions.

“**Agreement**” means the Quote and these Terms and Conditions.

“**Company**” or “**you**” means the entity which is purchasing services and/or the entity for which Innovatus is performing Services named on the Quote.

“**Innovatus**” means Innovatus Imaging Corporation.

“**Preliminary Quote**” means the quotation initially provided to Company by Innovatus with a list of products and services to be provided with pricing and certain other terms.

“**Updated Quote**” means any applicable updated quotation issued in accordance with Section 3 of these Terms and Conditions.

“**Quote**” means any Preliminary Quote and any related subsequently issued Updated Quotes issued pursuant to Section 3 of these Terms and Condition.

2. Acceptance – Entire Agreement. Innovatus’ products and services are sold only under the terms and conditions stated in this Agreement. Acceptance and fulfillment of any Company issued purchase order is expressly and exclusively made conditional on your assent to these terms and conditions. Any different or additional terms and conditions that may appear in your purchase order or any other document sent by you shall have no effect. Innovatus expressly objects to and rejects all inconsistent or additional terms, conditions and limitations contained on any of your forms or other writings. If you do not communicate your objection to these terms and conditions in writing and within five (5) calendar days from the date you receive them, or if you accept the product or services covered by the Quote, you will be deemed to have accepted these terms and conditions and they will control in all instances. Delivery of products and/or performance of services by Innovatus shall not constitute Innovatus’ consent to or acceptance of any terms not found in this Agreement. In the event of a conflict between these terms and conditions, any terms contained on the Quote, these terms and conditions shall govern except to the extent expressly set forth in the Quote. The terms on this Agreement are not subject to verbal changes or other agreements unless approved in writing by a corporate officer of Innovatus. No course of dealing or delay or failure of Innovatus in exercising any right hereunder will affect any other or future exercise of any such right.

3. Evaluation of Defective Products and Updated Quotes. Upon receipt, Innovatus shall evaluate any defective product sent to Innovatus for repair (“**Defective Product**”). After completing a preliminary inspection of the Defective Product, Innovatus shall notify you of the recommended course of action for repair or exchange of the Defective Product and if necessary, provide you with an Updated Quote reflecting any modifications, additions, or reductions to the Preliminary Quote. Innovatus also reserves the right to alter the pricing or other terms quoted in the Preliminary Quote or any subsequent related Updated Quote for any reason including, without limitation, the availability of parts, the need to purchase proprietary components, the need to produce components, or additional work and charges resulting from the Defective Product being altered or previously repaired (including products that no longer contain all original OEM parts). If an Updated Quote is issued by Innovatus, such Updated Quote shall supersede the Preliminary Quote and any related previously issued Updated Quotes in all respects and the Preliminary Quote and any related previously issued Updated Quotes shall have no further force or effect, unless otherwise set forth in the newly issued Updated Quote. Innovatus reserves the absolute right to decline to repair any Defective Products at any time.

4. New or Replacement Products. In the event that you choose to purchase a New or Replacement Product, you may have the option to return to Innovatus your defective product (the “**Defective Core**”) in exchange for a New or Replacement Product that you have purchased from Innovatus. After you receive your New or Replacement Product you must ship the Defective Core to Innovatus within seven (7) business days. In order to receive credit for the return of the Defective Core, the Defective Core returned must be the same part number and revision level (equal to or greater than) of the product purchased, all parts must be fully intact and the Defective Core must contain the original serial number and meet common industry acceptance criteria. Innovatus reserves the right to

refuse or return any Defective Cores that does not meet the requirements herein. If a Defective Core meeting these requirements is not received by Innovatus within ten (10) business days from the time you received the New or Replacement Product, you will be charged the fair market value of the Defective Core.

5. Restocking Fee. New or Replacement Products may be returned to Innovatus within 10 business days. If, upon inspection by Innovatus, the New or Replacement Product(s) are fully functional and show no signs of tampering, Innovatus shall issue a refund to Company in the amount of the original purchase price for such New or Replacement Product less a 40% restocking fee. Such restocking fee shall be based upon the original purchase price of the New or Replacement Product not including any applicable discounts, rebates, or other price reductions. The Company shall not be entitled to any refund for New or Replacement Products not returned within 10 business days.

6. Loaner Units. If Innovatus provides you with a loaner unit for temporary use during transit, evaluation and repair of a Defective Product ("**Loaner Unit**"), your use of such Loaner Unit shall be governed by these terms and conditions.

(a) Cost During Service Period. If you receive a Repaired Product or New or Replacement Product, Loaner Units will be provided free of charge, except that, Innovatus will add a charge to the existing purchase order number related to the Defective Product in an amount equal to the lesser of (x) \$150.00 a day for the Loaner Unit until it is returned or (y) the full market value of the Loaner Unit if any of the following occur.

- i) If you have failed to send the Defective Product to Innovatus within seven (7) calendar days of receipt of the Loaner Unit.
- ii) If you fail to return the Loaner Unit to Innovatus within seven (7) calendar days of receipt of the Repaired Product or the New or Replacement Product.

In addition to the foregoing, if upon inspection by Innovatus, a Loaner Unit is determined to be damaged or in need of repair or replacement upon return from you, Innovatus will add a charge to the existing purchase order number related to the Defective Product in an amount equal to the difference between the amount already paid in accordance with the foregoing and the lower of (i) the Innovatus repair list price if repairable or (ii) the full market value of the Loaner Unit.

(b) Cost If No Services Rendered. If, after Innovatus notifies you of the recommended course of action for repair or exchange of the Defective Product, you request a return of the Defective Product and reject any service by Innovatus, you will be charged a \$150.00 evaluation fee plus the applicable Loaner Fee for the use of the Loaner Unit: (\$500.00 for MRI Coils and Standard Transducers, \$750.00 for High End Transducers and Mechanical 3D/4D Transducers, \$1250.00 for Philips X5-1 models and Transesophageal Echocardiography (TEE) Transducers, and \$3500.00 for 3D/4D TEE Transducers). Additionally, if the Loaner Unit is not returned within seven (7) calendar days from the time Innovatus notifies you of the recommended course of action for repair or exchange of the Defective Product, Innovatus will add a charge to the existing purchase order number related to the Defective Product in an amount equal to the lesser of (x) \$150.00 a day for the Loaner Unit until it is returned or (y) the full market value of the Loaner Unit.

7. Pricing and Payment Terms. All pricing is subject to change based on availability. In the event of a change in the price set forth in any Preliminary Quote or subsequently issued Updated Quote, Innovatus shall issue an additional Updated Quote with updated pricing. Unless otherwise set forth in the Quote, all shipping is F.O.B. Origin. The pricing for products and services provided under the Quote may reflect or be subject to discounts, rebates, or other price reduction programs. Please be advised that you are obligated to: a) fully and accurately disclose the amount of any such discounts, rebates, or other price reductions in cost reports or claims for reimbursement to Medicare, Medicaid, or health care programs requiring such disclosure and b) provide such documentation to representatives of the Secretary of the Department of Health and Human Services and state agencies upon request. Unless noted otherwise, the value of any product listed as \$0.00 on the Quote may

constitute a discount that you should evaluate when filing such reports. You may request additional information from Innovatus in order to meet your reporting or disclosure obligations, by writing to 575 Epsilon Drive, Suite 1, Pittsburgh, PA 15238. All payments are due net thirty (30) calendar days on the total invoiced amount. No other payment terms shall be permitted unless approved in writing by a corporate officer of Innovatus.

8. Acceptance; Warranty. Unless otherwise specified by Innovatus in writing, Innovatus warrants that the specific repair performed by Innovatus and/or any new or replacement product purchased outright or on exchange from Innovatus ("**New or Replacement Product**"), shall be free from defects in workmanship or material under proper, normal use for a period of ninety (90) calendar days from the date Innovatus ships either the product that is repaired by Innovatus (the "**Repaired Product**") back to you or ships you a New or Replacement Product. During the warranty period, there shall be no charge for any action deemed necessary by Innovatus, including parts, travel or labor to fulfill the terms of the warranty, during normal business hours (8:00 a.m. to 6:00 p.m. EST/EDT, Monday through Friday, except holidays). If the defect or problem is not directly related to the specific repair performed by Innovatus and warranted hereunder, or if it is a result of misuse or abuse, Innovatus shall at your option: a) repair the product and charge you Innovatus list price for the repair, b) return the product to you unrepaired, or c) source a replacement product at current market price.

9. Warranty Exclusions and Limitation of Liability. EXCEPT AS PROVIDED IN SECTION 8, INNOVATUS EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL INNOVATUS BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR OPERATION OF INNOVATUS' PRODUCT OR SERVICE. IN NO EVENT IS INNOVATUS RESPONSIBLE FOR DAMAGES THAT EXCEED THE PAYMENT, IF ANY, RECEIVED BY INNOVATUS FOR THE PRODUCT OR SERVICE FURNISHED, OR TO BE FURNISHED, PURSUANT TO THIS AGREEMENT. Some states do not allow the exclusions on limitation of incidental or consequential damages, so the above limitations may not apply. COMPANY AGREES THAT INNOVATUS' LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE COMPANY TO INNOVATUS FOR THE PRODUCTS AND SERVICES UNDER THE APPLICABLE QUOTE. The parties agree that amounts stated herein are fair under the circumstances and that the prices charged by Innovatus to Company reflect such limitation of liability.

10. Shipping Instructions for all Defective Products, Defective Cores, Loaner Units, and Returned New or Replacement Products. All Loaner Units and Defective Cores must be sent to the applicable address below with the RMA # clearly visible on the box, unless otherwise agreed to in writing by Innovatus prior to the provision of such service. Unless the Repaired Product or New or Replacement Product is covered under a valid warranty claim, the Company shall be solely responsible for all shipping costs related to shipping the Defective Product to Innovatus and shall bear all risk of loss until the Defective Product is accepted by Innovatus regardless of which party prepares the shipping label used to ship the Defective Product to Innovatus.

For TEE Ultrasound Transducers, Ultrasound Parts, and MR Coils

TEE Transducer / MR Repair Facility  
Innovatus Imaging Corporation  
575 Epsilon Drive, Suite 1  
Pittsburgh, PA 15238  
Phone: (844) 687-5100

For Standard and Mechanical 3D/4D Ultrasound Transducers

Standard Transducer Repair Facility  
Innovatus Imaging Corporation  
c/o WETSCO  
12505-A East 55<sup>th</sup> Street  
Tulsa, OK 74146

11. Indemnity. Company agrees to defend, indemnify and hold Innovatus harmless on demand from all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys) asserted by or from Innovatus or its employees (former and current employees) or any third-party based on the Company, its suppliers, its subcontractors, its agents or their employees (former and current employees): (a) acts or omissions, and (b) breaches of this Agreement or violation of applicable laws.

12. Force Majeure. Innovatus will not be responsible for delays or non-performance directly or indirectly caused by any acts of God, fire, explosion, war, accident, action by governmental authority, inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond Innovatus' reasonable control.

13. Subcontracting. Innovatus may subcontract any of the services it is obligated to perform pursuant to this Agreement, without the prior consent of Company.

14. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, United States of America, not including its principles of conflicts of laws. The parties hereby: (a) agree that any suit or proceeding may be brought in any state or federal court of competent jurisdiction sitting in Pittsburgh, Pennsylvania, and submit to the jurisdiction of such courts, and (b) waive any objection to the laying of venue, any claim that such litigation has been brought in an inconvenient forum and any objection that such court does not have jurisdiction over either party.

15. HIPAA. Innovatus represents that it is not a Business Associate as defined in the Health Insurance Portability and Accountability Act ("**HIPAA**") implementing regulations, found at 45 CFR § 160.103. The functions Innovatus is required to perform hereunder do not involve the creation, receipt, maintenance, transmission, use or disclosure of Protected Health Information ("**PHI**"). To the extent any creation, receipt, maintenance, transmission, use or disclosure of PHI does occur, it is covered under the incidental disclosure rule found in 45 CFR 164.502(a)(1). In addition, to the extent any incidental disclosure occurs, Innovatus agrees to keep all such information confidential.